

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE AMENDMENT OF PARAMETERS  
AND GUIDELINES ON:

RECONSIDERATION DIRECTED BY  
STATUTES 2005, CHAPTER 72, SECTION  
17 (ASSEM. BILL NO. 138)

Statutes 1975, Chapter 486; Statutes 1984,  
Chapter 1459; Statutes 1995, Chapter 303  
(Budget Act of 1995); Statutes 1996, Chapter  
162 (Budget Act of 1996); Statutes 1997,  
Chapter 282 (Budget Act of 1997); Statutes  
1998, Chapter 324 (Budget Act of 1998);  
Statutes 1999, Chapter 50 (Budget Act of  
1999); Statutes 2000, Chapter 52 (Budget Act  
of 2000); Statutes 2001, Chapter 106 (Budget  
Act of 2001); Statutes 2002, Chapter 379  
(Budget Act of 2002); Statutes 2003, Chapter  
1577 (Budget Act of 2003); Statutes 2004,  
Chapter 208 (Budget Act of 2004); Statutes  
2005, Chapter 38 (Budget Act of 2005).

No. 05-RL-4204-02 (CSM 4204 & 4485)

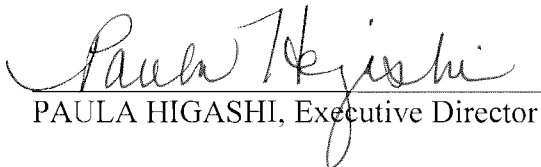
*Mandate Reimbursement Process*

ADOPTION OF AMENDMENT TO  
PARAMETERS AND GUIDELINES  
PURSUANT TO GOVERNMENT CODE  
SECTION 17557 AND CALIFORNIA  
CODE OF REGULATIONS, TITLE 2,  
SECTIONS 1183.2 AND 1185.3 AND  
STATUTES 2005, CHAPTER 72,  
SECTION 17 (ASSEM. BILL NO. 138)

*(Adopted on July 28, 2006)*

**AMENDED PARAMETERS AND GUIDELINES**

On July 28, 2006, the Commission on State Mandates adopted the attached Amended Parameters and Guidelines.

  
PAULA HIGASHI, Executive Director

Dated: August 7, 2006

## **AMENDED PARAMETERS AND GUIDELINES**

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459

As Reconsidered

Statutes 2005, Chapter 72, Section 17 (AB 138)

### *Mandate Reimbursement Process*

[Beginning Fiscal Year 2006-2007]

Adopted: November 20, 1986  
First Amendment Adopted: March 26, 1987  
Second Amendment Adopted: October 26, 1995  
Third Amendment Adopted: January 30, 1997  
Fourth Amendment Adopted: September 25, 1997  
Fifth Amendment Adopted: October 29, 1998  
Sixth Amendment Adopted: September 30, 1999  
Seventh Amendment Adopted: September 28, 2000  
Eighth Amendment Adopted: October 25, 2001  
Ninth Amendment Adopted: February 27, 2003  
Tenth Amendment Adopted: September 25, 2003  
Eleventh Amendment Adopted: December 9, 2004  
Twelfth Amendment Adopted: September 27, 2005  
Thirteenth Amendment Adopted: July 28, 2006

## I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

Statutes 2005, chapter 72, section 17 (AB 138) directed the Commission to reconsider whether the *Mandate Reimbursement Process* program (CSM Nos. 4204 & 4485) constitutes a reimbursable state-mandated program under article XIII B, section 6 in light of subsequently enacted state or federal statutes or case law. The Commission's decision is to be effective July 1, 2006, so that costs incurred up to that date would be reimbursable.

On May 25, 2006, the Commission adopted its Statement of Decision on reconsideration. The Commission determined that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it is not subject to article XIII B, section 6 of the California Constitution. As to the 1984 test claim statute, Government Code section 17556, subdivision (f) prohibits the Commission from finding costs mandated by the state if:

The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

Applying this statute, the Commission determined that Statutes 1984, chapter 1459 is reasonably within the scope of or necessary to implement article XIII B, section 6 which was enacted in Proposition 4, a ballot measure approved in a statewide election. Therefore, on reconsideration, the Commission denied the test claim, finding that the statutes do not constitute a reimbursable state mandated program, effective July 1, 2006.

## **II. ELIGIBLE CLAIMANTS**

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

## **III. PERIOD OF REIMBURSEMENT**

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
- (b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.<sup>1</sup>

## **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under

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<sup>1</sup> Statutes 2006, chapter 38 (AB 1811), Item 8885-295-0001, Schedule 3, (y).

penalty of perjury under the laws of the State of California that the foregoing is true and correct, ” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

#### Claims

All costs incurred by local agencies and school districts in preparing successful claims are reimbursable, including those same costs of an unsuccessful claim if an adverse Commission ruling is later reversed as a result of a court order. A *successful* claim is one that was filed before July 1, 2006 and is heard and approved by the Commission. The reimbursable activity is limited to preparing claims filed with the Commission before July 1, 2006.

Costs incurred for presenting claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions are not reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

### **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

#### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

##### **1. Salaries and Benefits**

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

##### **2. Materials and Supplies**

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

### 4. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

## B. Indirect Cost Reporting

### 1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## 2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

## 3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

## 4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenues the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, and California Code of Regulations, title 2, section 1183.2.

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<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statements of Decision are legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim and the Reconsideration. The administrative record, including the Statements of Decision, are on file with the Commission.